

48A C.J.S. Judges § 26

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

II. Selection, Eligibility, and Qualification

A. Selection

2. Manner or Method of Selection

a. In General

§ 26. Election

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West's Key Number Digest

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A state constitution may require that judges be elected.

A state constitution may require that judges be elected¹ with exceptions in certain limited circumstances such as an appointment made to fill a vacancy in an already elected judge's office.² Elections may be required in cases of newly created judgeships.³

A judicial candidate runs for the office rather than against a given opponent.⁴ However, where the manner of selection is by election, the election may be one with candidates running for individual judgeships rather than one in which all candidates in the field run for the total number of judgeships to be filled in the election.⁵

Insulation from partisan politics.

A state generally may take reasonable measures to further the policy of eliminating partisan politics from the selection process.⁶ A state's code of judicial ethics may prohibit judges and judicial candidates from disclosing their party affiliation in any form of advertising, or when speaking to a gathering, with limited exceptions.⁷ It may also prohibit judges and judicial candidates from soliciting campaign funds⁸ and prohibit judges from publicly endorsing or speaking on behalf of partisan candidates.⁹ A state may not, however, prohibit candidates for judicial election from announcing their views on disputed legal or political issues.¹⁰

Nor may a state prohibit partisan organizations from endorsing judicial candidates,¹¹ and a state lacks a compelling government interest for a statute criminalizing political party endorsements of judicial candidates.¹²

CUMULATIVE SUPPLEMENT

Cases:

A State's interest in preserving public confidence in the integrity of its judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections, and States may regulate judicial elections differently than they regulate political elections, because the role of judges differs from the role of politicians. [Williams-Yulee v. Florida Bar](#), 135 S. Ct. 1656 (2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ohio—[State ex rel. Whitehead v. Sandusky Cty. Bd. of Commrs.](#), 133 Ohio St. 3d 561, 2012-Ohio-4837, 979 N.E.2d 1193 (2012).
- 2 Ohio—[State ex rel. Whitehead v. Sandusky Cty. Bd. of Commrs.](#), 2012-Ohio-4484, 980 N.E.2d 28 (Ohio Ct. App. 6th Dist. Sandusky County 2012), judgment aff'd in part, rev'd in part on other grounds, 133 Ohio St. 3d 561, 2012-Ohio-4837, 979 N.E.2d 1193 (2012).

As to selection of judges by appointment, generally, see §§ 28 to 33.

Constitutional mandate of election precludes appointment
Or.—[State ex rel. Madden v. Crawford](#), 207 Or. 76, 295 P.2d 174 (1956).
- 3 Mich.—[Schwartz v. Secretary of State](#), 393 Mich. 42, 222 N.W.2d 517 (1974).

Ohio—[State ex rel. Whitehead v. Sandusky Cty. Bd. of Commrs.](#), 133 Ohio St. 3d 561, 2012-Ohio-4837, 979 N.E.2d 1193 (2012).
- 4 N.Y.—[People v. Smith](#), 69 Misc. 2d 746, 331 N.Y.S.2d 81 (County Ct. 1972).
- 5 Mont.—[Yunker v. Murray](#), 170 Mont. 427, 554 P.2d 285 (1976).

Unitary offices
N.Y.—[People v. Smith](#), 69 Misc. 2d 746, 331 N.Y.S.2d 81 (County Ct. 1972).
- 6 Utah—[Matheson v. Monson](#), 588 P.2d 147 (Utah 1978).
- 7 U.S.—[Carey v. Wolnitzek](#), 614 F.3d 189 (6th Cir. 2010) (applying Kentucky law).
- 8 U.S.—[Carey v. Wolnitzek](#), 614 F.3d 189 (6th Cir. 2010) (applying Kentucky law).
- 9 U.S.—[Siefert v. Alexander](#), 608 F.3d 974 (7th Cir. 2010) (applying Wisconsin law).
- 10 **Prohibition unconstitutional**
U.S.—[Republican Party of Minnesota v. White](#), 536 U.S. 765, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002) (applying Minnesota law).

- 11 U.S.—[Concerned Democrats of Florida v. Reno](#), 458 F. Supp. 60 (S.D. Fla. 1978) (applying Florida law).
- No constitutional prohibition against nomination of candidate by party conventions**
Mich.—[Committee for Constitutional Reform v. Secretary of State of Mich.](#), 425 Mich. 336, 389 N.W.2d 430 (1986).
- 12 U.S.—[Sanders County Republican Cent. Committee v. Bullock](#), 698 F.3d 741 (9th Cir. 2012) (applying Montana law).

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